



Federal Communications Commission
Washington, D.C. 20554

May 28, 2014

DA 14-725

Samuel L. Feder
Jenner & Block LLP
1099 New York Ave, NW
Suite 900
Washington, DC 20001

Monica Gambino
Crown Castle International Corp
2000 Corporate Drive
Canonsburg, PA 15317

Re: Call Sign WPYQ831; FCC File No. 0005438821 (OP LLC Request for a Limited Extension or Waiver of the Section 27.14 Substantial Service Deadline for the 1670-1675 MHz Band); FCC File No. 0005964295 (OP LLC Construction Notification); FCC File No. 0005852832 (OP LLC Renewal Application)

Dear Mr. Feder and Ms. Gambino:

For the reasons stated below, the Wireless Telecommunications Bureau (Bureau) grants OP LLC (OP)¹ a waiver and extends for two years, until October 1, 2015, the current deadline to complete construction of its nationwide 1670-1675 MHz Band license, Call Sign WPYQ831 (the License). In addition, the Bureau dismisses without prejudice OP's initial construction notification and conditionally grants OP's renewal application.

OP holds a nationwide 5 MHz license for the 1670-1675 MHz Band. Pursuant to Section 27.14 of the Commission's rules, OP must make a showing of "substantial service" in its license area within 10 years of its license grant, *i.e.*, by October 1, 2013.² Initially, on October 9, 2012, OP filed a request for a three-year extension or waiver of its construction deadline.³ The Extension Request relied on a plan by OP's current *de facto* transfer lessee, One Dot Six Corp., an affiliate of LightSquared (LightSquared),⁴ to use the spectrum as part of a nationwide, terrestrial broadband network.⁵ At that time, OP argued that a three-year extension of the construction deadline was warranted based on LightSquared's proposed

¹ OP is an indirect subsidiary of Crown Castle International Corp. (Crown Castle).

² See 47 C.F.R. §§ 27.13(e), 27.14(a).

³ FCC File No. 0005438821 OP LLC Request for a Limited Extension or Waiver of the Section 27.14 Substantial Service Deadline for the 1670-1675 MHz Band (Oct. 9, 2012) (Extension Request).

⁴ Call sign WPYQ831 was previously leased to a predecessor of LightSquared. Extension Request at 2.

⁵ Extension Request at 2. OP states that Crown Castle originally planned to use the License to deploy advanced services and to this end invested "tens of millions of dollars in a mobile video service." *Id.*

plans.⁶ On November 5, 2012, the Bureau placed the Extension Request on Public Notice for comment.⁷ No substantive comments were received.

On September 30, 2013, OP filed: 1) a construction notification for the License purporting to demonstrate that it had achieved substantial service for the License based on LightSquared's actual construction of a Digital Video Broadcast for Handheld (DVB-H) network;⁸ and 2) an application for renewal of the License.⁹ OP, via LightSquared, later supplemented its construction showing on March 19, 2014.¹⁰

In support of its substantial service showing, OP states that its *de facto* transfer lessee¹¹ constructed a DVB-H network using the License to provide one-way mobile video service.¹² OP states that the DVB-H network is comprised of 59 transmitters,¹³ deployed at a total capital investment of \$7 million, and operated at a cost approximately \$1 million annually.¹⁴ As of the date of its Construction Notification, OP states that it covered approximately 88.5 million people, or 28.3 percent of the United States population.¹⁵ Further, OP notes that approximately 16 percent of the network's predicted geographic coverage area is rural.¹⁶

OP states that the DVB-H network is used to provide one-way video service to LightSquared's existing Mobile Satellite Service (MSS) subscribers.¹⁷ According to OP, subscribers use mobile receivers paired with one of three external antennas to receive service.¹⁸ OP states that LightSquared has been rolling out this service as an add-on offering via its current network of distributors.¹⁹ OP further states that LightSquared's customer base includes "a variety of business and governmental end users with

⁶ Extension Request at 1.

⁷ See Wireless Telecommunications Bureau Seeks Comment on Request By OP LLC For Extension or Waiver of the Construction Deadline Concerning its 1670-1675 MHz Band License, *Public Notice*, 27 FCC Rcd 13524 (2012).

⁸ FCC File No. 0005964295 OP LLC Construction Notification (Sept. 30, 2013) (Construction Notification).

⁹ FCC File No. 0005852832 OP LLC Renewal Application (Sept. 30, 2013) (Renewal Application).

¹⁰ Letter from Jeffery J. Carlisle, Executive Vice President, Regulatory Affairs and Public Policy, LightSquared, to Marlene H. Dortch, Secretary, Federal Communications Commission (Mar. 19, 2014) (Construction Supplement).

¹¹ Pursuant to the Commission's rules, OP may rely on its *de facto* transfer lessee to meet its substantial service requirement. See 47 C.F.R. § 1.9030(d)(5)(i).

¹² Construction Notification at 1; Construction Supplement at 1.

¹³ According to OP, each DVB-H transmitter station is equipped with an Axcera transmitter and a Kathrein omni or directional transmitting antenna. Construction Notification at 2.

¹⁴ Construction Supplement at 2. At the time it filed the Construction Notification, LightSquared had deployed 51 transmitter sites. Construction Notification at 1-2.

¹⁵ OP notes that with the addition of 8 transmitters since the filing of the Construction Notification, its coverage is more extensive today.

¹⁶ Construction Supplement at 2.

¹⁷ Construction Notification at 1; Construction Supplement at 1.

¹⁸ Construction Supplement at 2.

¹⁹ Construction Notification at 3.

specialized service needs, who are managed and serviced directly by a variety of intermediate entities to which LightSquared wholesales MSS capacity.”²⁰ OP notes that LightSquared’s MSS subscribers have used its MSS service over the past year within the coverage areas of each of the 59 deployed transmitters.²¹

A waiver may be granted, pursuant to 1.925 of the Commission’s rules, if the petitioner establishes that: 1) the underlying purpose of the rule would not be served or would be frustrated by application to the instant case, and that grant of the waiver would be in the public interest; or 2) where the petitioner establishes unique or unusual factual circumstances, that application of the rule would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.²²

As an initial matter, we are not persuaded that OP’s current level of construction and coverage (through its *de facto* transfer lessee) should be construed as “substantial service.” Substantial service is defined as “service that is sound, favorable, and substantially above a level of mediocre service that might minimally warrant renewal.”²³ OP’s License in the 1670-1675 MHz Band authorizes nationwide operation. While LightSquared uses the License to offer add-on, one-way video service to its existing MSS customer base, LightSquared’s service coverage in the 1670-1675 MHz Band to this point has been focused on select urban markets, resulting in coverage to only 28.3 percent of the U.S. population. Based on the information provided in the Construction Notification, there is no or extremely limited coverage in 23 out of the 50 states (and Washington, DC). This low overall population coverage under a nationwide authorization is insufficient to demonstrate substantial service. OP further notes that LightSquared’s DVB-H system covers approximately 11,000 square miles of rural area, representing 16 percent of the geographic area covered by its constructed transmitters.²⁴ However, we also do not believe that the limited level of rural coverage, resulting from the construction of transmitters in exclusively urban areas, merits a finding of substantial service. As reflected in the Commission’s 16th Mobile Competition Report, under our rural definition, roughly 59 million people, or 19 percent of the U.S. population, live in rural counties. These counties comprise 3.1 million square miles, or 86 percent of the geographic area of the United States.²⁵ Accordingly, we estimate LightSquared’s rural coverage in the 1670-1675 MHz Band to be approximately 0.35 percent of the rural square miles of U.S. geography. While licensee’s have flexibility in determining where to provide coverage and service offerings, we would expect construction

²⁰ Construction Supplement at 1.

²¹ *Id.*

²² 47 C.F.R. § 1.925. The Commission has stated that, in situations in which the circumstances are unique and the public interest would be served, it would consider waiving construction requirements on a case-by-case basis. *See* Amendment of the Commission’s Rules To Establish New Personal Communications Services, GEN Docket No. 90-314, *Memorandum Opinion and Order*, 9 FCC Rcd 4957, 5019 (1994) (*PCS MO&O*), *citing WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969).

²³ 47 C.F.R. § 27.14(a).

²⁴ Construction Supplement at 2.

²⁵ Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993 Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, Including Commercial Mobile Services, *Sixteenth Report*, 28 FCC Rcd 3700, 3939, ¶ 387 (2013).

of the License, a nationwide authorization, to be more robust at the ten-year construction deadline. Accordingly, we dismiss without prejudice OP's Construction Notification.²⁶

Although we do not accept OP's substantial service showing, we are encouraged with LightSquared's progress to date in deploying a system that provides additional services to its MSS customer base. Accordingly, consistent with our prior decision in *NRTC*, we find that a waiver to extend for two years the deadline for OP to meet its construction requirement is warranted in the public interest,²⁷ and that the underlying purpose of the rule would be frustrated absent such relief. As in *NRTC*, OP holds a nationwide license, for which it has undertaken construction of (via its *de facto* transfer lessee) a network, and provides actual service to customers.²⁸ We recognize that wireless providers seek to distinguish their services with value added offerings, and thus providing OP with an additional two years to further develop its service offering is consistent with the Commission's public interest goal of promoting efficient use of the spectrum. Through its construction of 51 sites²⁹ and a DVB-H mobile video network covering 28.3% of the U.S. population,³⁰ OP has demonstrated that it has and will continue to put the licenses to effective use and will not warehouse the spectrum. As in *NRTC*, OP's demonstrated construction efforts, while not yet reaching a level of substantial service, warrant additional time for further construction to meet our substantial service requirement.³¹ Accordingly, we grant a two-year waiver of the 10-year construction deadline in Section 27.14 of our rules; OP's 10-year construction deadline is now October 1, 2015. In addition, we grant OP's Renewal Application for the License, conditioned on OP satisfactorily demonstrating substantial service by the end of its extended construction deadline, October 1, 2015.³²

Because we find that a waiver is warranted based solely on OP's demonstrated progress with LightSquared's actual DVB-H network buildout, as reflected in OP's Construction Notification, we need not address the arguments in the Extension Request regarding LightSquared's proposed terrestrial

²⁶ See Wireless Telecommunications Bureau, Mobility Division Announces the Dismissal of 220 MHz Service Phase II Construction Notifications, *Public Notice*, 19 FCC Rcd 18095 (WTB, Mobility Division 2004) (Extending five-year construction deadline for certain 220 MHz Service licensees and dismissing related construction notifications without prejudice).

²⁷ See *NRTC LLC Demonstration of Five-Year Construction Requirements and Request for Extension of Construction Deadline*, *Order*, 24 FCC Rcd 8656, 8660, ¶ 11 (Mobility Division, Wireless Telecommunications Bureau 2009) (*NRTC Order*) (granting extension of five- and ten-year construction deadlines).

²⁸ *NRTC Order*, 24 FCC Rcd at 8660, ¶ 11 (granting construction deadline extension where nationwide licensee had constructed 395 sites across 17 states).

²⁹ An additional 8 sites were constructed after the construction deadline. Construction Supplement at 1.

³⁰ Construction Supplement at 2.

³¹ *NRTC Order*, 24 FCC Rcd at 8660, ¶ 11.

³² OP will be required to file a construction notification within 15 days of the extended October 15, 2015 deadline. See 47 C.F.R. § 1.946 (d).

broadband wireless network. However, this grant is without prejudice to OP demonstrating that additional time to construct through its *de facto* lessee's proposed terrestrial broadband wireless network is warranted based upon material changes to facts and circumstances during this extension period.

Action taken pursuant to 47 U.S.C. §§ 154(i), 47 C.F.R. §§ 1.925, 27.14.

Sincerely,

Roger S. Noel
Chief, Mobility Division
Wireless Telecommunications Bureau
Federal Communications Commission